

MOTION RELATED TO FREEDOM OF EXPRESSION AT MIDDLEBURY

Moved by: Ata Anzali, Keegan Callanan, Stephen Donadio, Caitlin Myers, Michael Kraus, Jay Parini, Robert Schine, John Schmitt, Allison Stanger, and Don Wyatt

Motion:

I. We move that the *College Handbook* be amended to add the following text as the last item in the "General Information" section:

"Freedom of Expression Policy

Because the College is committed to free and open inquiry in all matters, it guarantees all members of the College community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the College, Middlebury College fully respects and supports the freedom of all members of the College community "to discuss any problem that presents itself."

Of course, the ideas of different members of the College community will often and quite naturally conflict. But it is not the proper role of the College to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the College greatly values civility, and although all members of the College community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The College may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the College. In addition, the College may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the College. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the College's commitment to a completely free and open discussion of ideas.

In a word, the College's fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the College community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the College community, not for the College as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the College community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the College's educational mission.

As a corollary to the College's commitment to protect and promote free expression, members of the College community must also act in conformity with the principle of free expression. Although members of the College community are free to criticize and contest the views expressed on campus, and to criticize and contest speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the College has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

This statement was originally drafted and adopted by the University of Chicago."

II. We further move that, in the current "Free Inquiry and Expression" sub-section within the "Student Organizations" section of the *Handbook*, the underlined amendment be made (set in context with changes tracked below):

"Freedom of Inquiry and Expression

In addition to the policies below, please see Other Policies and Information:
Demonstrations and Protests.

1. Consistent with the College Freedom of Expression Policy, Students and student organizations are free to examine and discuss all questions of interest to them and to express opinions publicly and privately. They should always be free to support causes by orderly means which do not disrupt Middlebury's or the community's regular and essential operation. At the same time, it should be made clear to the academic and larger community that students or student organizations speak only for themselves in their public expressions or demonstrations.
2. Officially recognized student organizations may invite to the campus and hear any person of their choosing. Middlebury reserves the right to ensure orderly scheduling of facilities, which prevents unnecessary conflict with other Middlebury events and provides adequate preparation for the event. It should be made clear to the academic and larger community that sponsorship of guest speakers does not necessarily imply approval or endorsement of the views expressed, either by the sponsoring group or Middlebury.
3. Student organizations bear full responsibility for arranging and financing any Department of Public Safety services that may be necessary in connection with controversial speakers. The DOS has the right to receive full and accurate information regarding Department of Public Safety measures at any time they so request. The DOS also has the right to specify security measures to the organizations as seem appropriate. If Middlebury, through the DOS or the president, judges that security arrangements are inadequate and that the sponsoring organization is either unwilling or unable to make proper arrangements, the event may be canceled by the dean or president."

Rationale:

Our *Handbook* currently states, “Middlebury College strives to create a diverse and inclusive community that fosters respect and engagement of difference, recognizing that such a community is better able to provide a rich, varied educational environment.” In a community striving toward this end, free speech protects the right of all individuals and groups to be heard. We recognize the uneven burden that freedom of speech can impose on under-represented minorities. By the same token, minorities often stand to lose the most under regimes of restricted speech. Free speech is the precondition for ensuring that all viewpoints find a voice in the complex and demanding pursuit of knowledge to which, as a community of scholars, we have committed ourselves.

As the American Association of University Professors (AAUP) argues in its statement on “Freedom of Expression and Campus Speech Codes,” “An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas.” The exercise of such power becomes an obstacle, not an aid, on our path toward the community of mutual understanding and inquiry we hope to be and become. The power to silence dissent—even repugnant, stale, and wrong-headed dissent—runs the risk of reducing knowledge to dogma and cutting off access to new ideas.

The proposed “Freedom of Expression” language was adopted by the University of Chicago and Princeton University in 2015. Purdue University and Winston-Salem State University (a historically black university) have also more recently adopted it, and the University of Wisconsin likewise used this language when it reiterated its system-wide commitment to academic freedom. The language represents a plainspoken statement on this matter and was originally crafted in consultation with legal counsel.

AAUP Statement "On Freedom of Expression and Campus Speech Codes"

The statement that follows was approved by the Association's Committee A on Academic Freedom and Tenure in June 1992 and adopted by the Association's Council in November 1994. Available at <https://www.aaup.org/report/freedom-expression-and-campus-speech-codes>

Freedom of thought and expression is essential to any institution of higher learning. Universities and colleges exist not only to transmit knowledge. Equally, they interpret, explore, and expand that knowledge by testing the old and proposing the new. This mission guides learning outside the classroom quite as much as in class, and often inspires vigorous debate on those social, economic, and political issues that arouse the strongest passions. In the process, views will be expressed that may seem to many wrong, distasteful, or offensive. Such is the nature of freedom to sift and winnow ideas.

On a campus that is free and open, no idea can be banned or forbidden. No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.

Universities and colleges are also communities, often of a residential character. Most campuses have recently sought to become more diverse, and more reflective of the larger community, by attracting students, faculty, and staff from groups that were historically excluded or underrepresented. Such gains as they have made are recent, modest, and tenuous. The campus climate can profoundly affect an institution's continued diversity. Hostility or intolerance to persons who differ from the majority (especially if seemingly condoned by the institution) may undermine the confidence of new members of the community. Civility is always fragile and can easily be destroyed.

In response to verbal assaults and use of hateful language, some campuses have felt it necessary to forbid the expression of racist, sexist, homophobic, or ethnically demeaning speech, along with conduct or behavior that harasses. Several reasons are offered in support of banning such expression. Individuals and groups that have been victims of such expression feel an understandable outrage. They claim that the academic progress of minority and majority alike may suffer if fears, tensions, and conflicts spawned by slurs and insults create an environment inimical to learning.

These arguments, grounded in the need to foster an atmosphere respectful of and welcoming to all persons, strike a deeply responsive chord in the academy. But, while we can acknowledge both the weight of these concerns and the thoughtfulness of those persuaded of the need for regulation, rules that ban or punish speech based upon its content cannot be justified. An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant. Indeed, by proscribing any ideas, a university sets an example that profoundly disserves its academic mission.

Some may seek to defend a distinction between the regulation of the content of speech and the regulation of the manner (or style) of speech. We find this distinction untenable in practice because offensive style or opprobrious phrases may in fact have been chosen precisely for their expressive power. As the United States Supreme Court has said in the course of rejecting criminal sanctions for offensive words:

[W]ords are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.

The line between substance and style is thus too uncertain to sustain the pressure that will inevitably be brought to bear upon disciplinary rules that attempt to regulate speech.

SUPPORTING DOCUMENT RE: MOTION ON FREEDOM OF EXPRESSION

Proponents of speech codes sometimes reply that the value of emotive language of this type is of such a low order that, on balance, suppression is justified by the harm suffered by those who are directly affected, and by the general damage done to the learning environment. Yet a college or university sets a perilous course if it seeks to differentiate between high-value and low-value speech, or to choose which groups are to be protected by curbing the speech of others. A speech code unavoidably implies an institutional competence to distinguish permissible expression of hateful thought from what is proscribed as thoughtless hate.

Institutions would also have to justify shielding some, but not other, targets of offensive language—proscribing uncomplimentary references to sexual but not to political preference, to religious but not to philosophical creed, or perhaps even to some but not to other religious affiliations. Starting down this path creates an even greater risk that groups not originally protected may later demand similar solicitude—demands the institution that began the process of banning some speech is ill equipped to resist.

Distinctions of this type are neither practicable nor principled; their very fragility underscores why institutions devoted to freedom of thought and expression ought not adopt an institutionalized coercion of silence.

Moreover, banning speech often avoids consideration of means more compatible with the mission of an academic institution by which to deal with incivility, intolerance, offensive speech, and harassing behavior:

1. Institutions should adopt and invoke a range of measures that penalize conduct and behavior, rather than speech—such as rules against defacing property, physical intimidation or harassment, or disruption of campus activities. All members of the campus community should be made aware of such rules, and administrators should be ready to use them in preference to speech-directed sanctions.
2. Colleges and universities should stress the means they use best—to educate—including the development of courses and other curricular and co-curricular experiences designed to increase student understanding and to deter offensive or intolerant speech or conduct. These institutions should, of course, be free (indeed encouraged) to condemn manifestations of intolerance and discrimination, whether physical or verbal.
3. The governing board and the administration have a special duty not only to set an outstanding example of tolerance, but also to challenge boldly and condemn immediately serious breaches of civility.
4. Members of the faculty, too, have a major role; their voices may be critical in condemning intolerance, and their actions may set examples for understanding, making clear to their students that civility and tolerance are hallmarks of educated men and women.
5. Student-personnel administrators have in some ways the most demanding role of all, for hate speech occurs most often in dormitories, locker rooms, cafeterias, and student centers. Persons who guide this part of campus life should set high standards of their own for tolerance and should make unmistakably clear the harm that uncivil or intolerant speech inflicts.

To some persons who support speech codes, measures like these—relying as they do on suasion rather than sanctions—may seem inadequate. But freedom of expression requires toleration of “ideas we hate,” as Justice Holmes put it. The underlying principle does not change because the demand is to silence a hateful speaker, or because it comes from within the academy. Free speech is not simply an aspect of the educational enterprise to be weighed against other desirable ends. It is the very precondition of the academic enterprise itself.